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In re Application of
Dellapenna, et al.
Application No. 10/674,767
Filed: September 30, 2003
Attorney Docket No. 87-01A

ON PETITION

This is a decision on the petition under 37 CFR 1.181 filed on April 21, 2008, to withdraw the holding of abandonment.

The petition is **DISMISSED**.

The relevant application history is as follows:

- A Revocation of Power of Attorney with New Power of Attorney and Change of Correspondence Address was filed by the assignee for the application on June 14, 2007, and signed by Jane Nichols. There is no indication of Ms. Nichols authority to sign the document.
- On June 22, 2007, the USPTO mailed a "Notice Regarding Power of Attorney" indicating that the power of attorney has not been entered because no certificate under 37 CFR 3.73(b) was filed. In fact, the certificate under 37 CFR 3.73(b) was previously filed on May 29, 2007.
- On July 2, 2007, applicant filed correspondence informing the USPTO that the 37 CFR 3.73 certificate was already of record and requesting the power of attorney be entered.
- The power of attorney was not entered.
- On August 6, 2007, a Notice of Non-Compliant Amendment was mailed to the previous attorney of record.
- On October 25, 2007, an Information Disclosure Statement was filed.
- On March 21, 2008, a Notice of Abandonment was mailed indicating that a proper response to the June 22, 2007, Notice Regarding Power of Attorney was not received.

A review of the Notice Regarding Power of Attorney does not reveal a period set for reply. The application could not, therefore, have gone abandoned for failure to respond to the Notice Regarding Power of Attorney and this indication in the Notice of Abandonment was a mistake. It appears that the application went abandoned for failure to file a timely and proper response to the August 6, 2007, Notice of Non-Compliant Amendment which was sent to the previous attorney.

Further review of the application file history reveals that on February 22, 2008, applicant filed a document titled "Applicant's Statement of Substance of Interview" in which applicant states that the applicant did not receive the Notice of Non-Compliant Amendment and that Examiner Kallis indicated that the Notice of Non-Compliant Amendment would be reissued as soon as the correspondence address

was changed pursuant to the request filed June 14, 2007. It is noted, however, that the June 14, 2007, Revocation of Power of Attorney with New Power of Attorney and Change of Correspondence Address was not proper; it was proper for the USPTO to refrain from entering the change requested at that juncture. It is noted that that request to change the address and power of attorney was filed by assignee for the application, yet there was no indication that the person who signed the document for the assignee was empowered by the assignee to do so. The Revocation of Power of Attorney with New Power of Attorney and Change of Correspondence Address was signed by a Jane Nichols with no indication of Ms. Nichols position or relation to the assignee¹. It would not have been proper for the USPTO to enter the new power of attorney and change the correspondence address pursuant to this filing because it was not apparent that assignee had authorized the changes. Based on the aforementioned, the Notice of Non-Compliant Amendment was properly sent to the correspondence address of record as it was on August 6, 2007, and petitioner's non-receipt of the Notice of Non-Compliant Amendment does not justify withdrawal of the holding of abandonment.

It is noted that petitioner maintains that the failure to have an authorized representative of the assignee sign the Revocation of Power of Attorney with New Power of Attorney and Change of Correspondence Address cannot be a cause for abandonment of the application because petitioner was not informed of this defect in the document. It is well established that applicants and practitioners are charged with having constructive knowledge of the rules and regulations governing the prosecution of the patent application, such as changes to the power of attorney and/or correspondence address will only be made when the change is authorized by all of the inventors, a registered attorney, or a properly empowered assignee. Further, petitioner's failure to file a properly executed Revocation of Power of Attorney with New Power of Attorney and Change of Correspondence is not mitigated by the failure of the USPTO to notify the petitioner that document was defective.

Alternatively, petitioner may revive the application based on unintentional abandonment under 37 CFR 1.137(b) (enclosed). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by the required reply, the required petition fee (\$1,540.00 for a large entity and \$770.00 for a verified small entity), and a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.

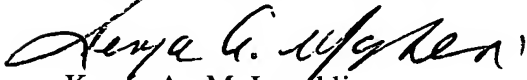
Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
United States Patent and Trademark Office
Box 1450
Alexandria, VA 22313-1450

By facsimile: (571) 273-8300
Attn: Office of Petitions

¹ It is noted that the 3.73(b) certificate filed May 29, 2007, was signed by Ms. Ellen Winner who was authorized to sign the document on behalf of the assignee. However, the later filed Revocation of Power of Attorney and Appointment of Attorney and Change of Correspondence Address was signed by Jane Nichols without any notation of her position with assignee.

Telephone inquiries concerning this decision should be directed to the undersigned (571) 272-3222.

A handwritten signature in black ink, appearing to read "Kenya A. McLaughlin". The signature is fluid and cursive, with the first name "Kenya" being more prominent.

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions